

TOWN OF TIVERTON  
ZONING BOARD OF REVIEW MINUTES

JUNE 2, 2010

The following petitions were received and were heard by the Tiverton Zoning Board of Review on Wednesday, June 2, 2010 at 7:30 p.m. at the Tiverton Town Hall, 343 Highland Road.

Members present: Chairman David Collins, Jay Jackson, Lise Gescheidt, Richard Taylor, Mathew Cayer, first alternate and Wendy Taylor Humphrey, second alternate.

Also present were: Wyatt Brochu, Assistant Town Solicitor, Gareth Eames, Building Official and Sally Ferreira, Court Reporter.

1. A petition has been filed by William C McLaughlin of 1640 Fish Road, Tiverton, RI requesting a variance to Article V Section 1 of the Tiverton Zoning Ordinance in order to allow a garage which was erected in 2007 to remain in its existing location at 1640 Fish Road, Tiverton, RI being Map 2-9 Block 113 Card 85F on Tiverton Tax Assessor's maps closer to the south side yard setback than is currently allowed in a R60 zoning district.

\*\*\*The Chairman stated a request has been made by Attorney Mr. Harrington on behalf of the petitioner that this matter be withdrawn without prejudice. Apparently, there are a lot of serious issues with this petition as far as boundary lines. Mr. Taylor stated the petitioner is still in violation of the lot lines and other issues that first brought this matter to light. Mr. Eames stated the petitioner is in the process of producing a set of documents from a surveyor to answer the question of the front lot line since there are two lot lines on the survey and they don't know which one is true.

Ms. Gescheidt made a motion to withdraw without prejudice. Mr. Cayer seconded. The vote was four to one. Voting against: Mr. Taylor. Voting in favor: Chairman David Collins, Ms. Gescheidt, Mr. Jackson and Mr. Cayer.

2. A petition has been filed by George Alzaibak of Tiverton, RI requesting a special use permit to Article XII Section 7.a. of the Tiverton Zoning Ordinance in order to erect a new internally illuminated freestanding sign on the existing pole at 1215 Stafford Road, Tiverton, RI being Map 04-10 Block 113 Card 5 on Tiverton Tax Assessor's maps which is prohibited in a GC zoning district.

**DECISION:** George Alzaibak was sworn in and stated the gas station he owns and operates has changed the branding, and the sign that is presently on site is really old and does not fit the station with the new renovations and does not look nice. Mr. Alzaibak went on to say he would like to eliminate the existing sign and replace it with one single sign. The new sign will be internally illuminated.

Mr. Taylor made a motion to grant the petition, that it is in keeping with the area. Overall, the public convenience and welfare is going to be served and it is not going to be detrimental to public health, safety, morals and welfare. It will be compatible with other signage along Stafford Road and it does not adversely affect the general character of the area. It will not create a nuisance. In fact, it is going to help pedestrian traffic and possibly improve the line of sight of people entering and exiting the business. Finally, in granting this petition it will not impact on water, sewage or any uses. Ms. Gescheidt seconded. The vote was unanimous. Voting were: Chairman David Collins, Ms. Gescheidt, Mr. Jackson, Mr. Cayer and Mr. Taylor.

3. A petition has been filed by George Alzaibak for Stone Bridge Realty LLC of Tiverton, RI requesting a special use permit to Article XII, Section 4.b., Article XIV, Section 7.b.(1), and Article IV, Sections 8.a, 10.a. & 10.b. in order to remove a legal non-conforming sign and erect a new one in the same location and to expand the use of a convenience store and add a pizza and coffee take-out area within the building at 1837 Main Road, Tiverton, RI being Map 6-2 Block 74 Card 16 on Tiverton Tax Assessor's maps whereby special use permits are required in a Waterfront zoning district.

**DECISION:** Attorney Jeremiah Leary on behalf of the petitioner explained that the land is zoned waterfront at the present time. The location being discussed is the former Getty Gas Station on Main Road near Stone Bridge. This business has a mechanical bay and it has a small but existing convenience store. Mr. Leary went on to say the petitioner is proposing to eliminate the mechanical bay and there will be no more mechanic worked performed, however, the gas station will remain and the convenience store will be expanded. The petitioner is also proposing to operate a small ice cream shop, a small coffee shop and a small pizza shop.

Mr. Leary added the footprint of the building will not change except for the bump-out needed for the walk-in cooler which is 6 feet wide and 16 feet long. The Board had the opportunity to look at renderings of what the building will look like once completed.

Mr. Leary stated the petitioner is proposing to remove the existing sign and replace it in the same location with an illuminated sign.

Chris Spencer, the town planner, was sworn in and explained to the Board the concept and design he was involved in developing. Mr. Spencer answered questions set forth by the Board. Hal Choubah, a professional engineer, was sworn in and answered the Board's questions regarding septic system issues. Nate Gottfried, a real estate expert, was sworn in. The Board accepted Mr. Gottfried as an expert in real estate as he has testified numerous times before the Board and in court.

The Board went into executive session to discuss the matter of the request of a special use permit to remove a legal nonconforming sign and erect a new one and to expand the use of the convenience store and add a pizza and coffee take-out area.

Ms. Gescheidt made a motion to grant on the grounds this will promote the public convenience and welfare and there is no detriment to anyone's physical health or safety. It is compatible with the neighborhood uses and doesn't adversely affect the character of the area and it does not create a nuisance or hinder or endanger vehicular or pedestrian traffic. There is adequate parking, water service and it is compatible with the Tiverton Town Plan. It is a nice design and a tremendous improvement to the area. Mr. Jackson seconded. The vote was unanimous. Voting were: Chairman David Collins, Ms. Gescheidt, Mr. Jackson, Mr. Cayer and Mr. Taylor.

4. A petition has been filed by George Alzaibak for Stone Bridge Realty LLC of Tiverton, RI requesting a variance to Article XIV Sections 5.a & 5.c. and Article IV Section 10.j. of the Tiverton Zoning Ordinance in order to construct an addition to the rear of the building to house coolers and expand the use of a convenience store and add a pizza and coffee take-out area within the building at 1837 Main Road, Tiverton, RI being Map 6-2 Block 74 Card 16 on Tiverton Tax Assessor's maps whereby expanding a legal non-conforming structure located in a Waterfront zoning district.

**DECISION:** Attorney Jeremiah Leary on behalf of the petitioner explained that the land is zoned waterfront at the present time. The location being discussed is the former Getty Gas Station on Main Road near Stone Bridge. This business has a mechanical bay and it has a small but existing convenience store. Mr. Leary went on to say the petitioner is proposing to eliminate the mechanical bay and there will be no more mechanic worked performed, however, the gas station will remain and the convenience store will be expanded. The petitioner is also proposing to operate a small ice cream shop, a small coffee shop and a small pizza shop.

Mr. Leary added the footprint of the building will not change except for the bump-out needed for the walk-in cooler which is 6 feet wide and 16 feet long. The Board had the opportunity to look at renderings of what the building will look like once completed.

Mr. Leary stated the petitioner is proposing to remove the existing sign and replace it in the same location with an illuminated sign.

Chris Spencer, the town planner, was sworn in and explained to the Board the concept and design he was involved in developing. Mr. Spencer answered questions set forth by the Board. Hal Choubah, a professional engineer, was sworn in and answered the Board's questions regarding septic system issues. Nate Gottfried, a real estate expert, was sworn in. The Board accepted Mr. Gottfried as an expert in real estate as he has testified numerous times before the Board and in court.

The Board went into executive session to discuss the matter of the request of a special use permit to construct an addition in the rear of the building and to expand the use of the convenience store and to add the pizza and coffee take-out area.

Mr. Jackson made a motion to grant the variance and that such relief is not contrary to the public interest and that the granting of the variance does not alter the general character of surrounding area and doesn't adversely affect the zoning ordinance or the Tiverton Comprehensive Plan. It will not encroach upon the back boundary lines and it is the least variance required. Mr. Taylor seconded. The vote was unanimous. Voting were: Chairman David Collins, Ms. Gescheidt, Mr. Jackson, Mr. Cayer and Mr. Taylor.

5. A petition has been filed by Steven and Carolynn Vallot of Tiverton, RI requesting a variance to Article XIV Section 5.d. and Article VIII Section 3.d.(1) of the Tiverton Zoning Ordinance in order to repair and replace garage structure which will be converted to living space and to change the roof line from a flat to a pitched roof located at 246 Pelletier Lane, Tiverton, RI being Map 3-12 Block 113 Card 41A-20 on Tiverton Tax Assessor's maps whereby expanding a legal non-conforming structure with 200 feet of Stafford Pond and located in a R60 zoning district.

**DECISION:** The petitioners were sworn in. Carolynn Vallot stated she would like to remove the garage and convert it into a living room. The Chairman asked if the existing garage is physically going to be removed and Ms. Vallott answered yes and a new structure would be built. Ms. Vallot went on to say the new structure would be the same square footage. She would like to bring the floor up 3 feet so it can be level with the main house. The roof line will be changed from a flat roof to a pitched roof.

Andre Lavoie, 172 Pelletier Lane, was sworn in and addressed the Board. Mr. Lavoie stated he was not concerned about the new structure but requested that the Board impose the same restrictions they imposed on the Berger petition which is to prohibit any further expansion of impervious areas on the property. Mr. Lavoie went on to say this lot is part of the Stapoco Condominium Complex, and the executive board of Stapoco is now formulating a regulation that will be added to their by laws to prohibit any further expansion of impervious areas on the property.

The Board went into Executive Session to discuss this petition. Ms. Gescheidt made a motion to grant the request on the grounds that repairing something that is in disrepair and terminating its use as a place for storing vehicles with a living room space is not going to increase the bathroom or the bedroom configuration of the house. There is no detriment to public interest and it will not affect health, safety or welfare of the neighbors. Requesting this will not affect the water shed and the changes are an improvement without being an expansion of what was there before. Mr. Jackson added that the motion be amended to say that the steps needed to enter the new structure be wooden in nature to prohibit any further expansion of impervious areas on the property. Ms. Gescheidt agreed to include that as part of the conditions in granting the request that the impervious space not be increased and that a wooden stairway that leads to rocks or a gravel driveway be in place instead of a concrete landing. Mr. Jackson seconded. The vote was unanimous. Voting were: Chairman David Collins, Ms. Gescheidt, Mr. Jackson, Mr. Cayer and Mr. Taylor.

6. A petition has been filed by Louis A. & Jane L. Ledoux of Somerset, Ma requesting a variance to Article V Section 1 and Article VI Section 8 of the Tiverton Zoning Ordinance in order to construct a single family dwelling at the End of Hayden Ave, Tiverton, RI being Map 1-13 Block 94 Card 7A on Tiverton Tax Assessor's maps with less than required frontage and without a "T shaped turnaround" located in a R30 zoning district.

**DECISION:** Louis Ledoux was sworn in and stated he would like to construct a single family dwelling with three bedrooms. He went on to say he purchased this land years ago and applied for a building permit but was told at that time it was only a 20 foot road and he could not construct anything on a 20 foot road in order to get to his property. Mr. Ledoux further stated about five years ago when the Town of Tiverton changed the zoning law to say a home could be constructed on a 20 foot road but a turnaround is needed. Mr. Ledoux informed the Board a home has been constructed on the same street.

The Board had concerns with the plans presented and there was discussion regarding the plans not showing a T in place for emergency vehicles to turn around. Ms. Gescheidt stated the plan before the Board is for a four-bedroom house and the lot size is different on the map than indicated on the application. The Chairman made a recommendation that the petitioner ask for a continuation to amend the drawing and address the discrepancies the Board has with the plans presented.

Mr. Ledoux asked if he were to put the T in as he had planned on doing would the Board grant his petition. The Chairman answered the Board is not asking him to actually physically install the T but they would like to see it on the drawing to show where it would be.

Mr. Taylor made the recommendation that the petitioner ask for input from the fire chief and the public works director to see if the turnaround would be adequate for their vehicles.

Linda Collard, 75 Massey Road, stated she has lived at her address for thirty years. She stated the street Mr. Ledoux is talking about the 20 feet of gravel was a right of way in the 1800's and was never a street. Mr. Brochu suggested that Ms. Collard present the Board with any documents or evidence that would assist the Board in making their decision.

Mr. Ledoux requested a continuance to the August zoning meeting so he can amend his drawing and speak to the fire chief and DPW director to address the Board's concerns.

Mr. Taylor made a motion to grant the petitioner a continuance. Mr. Jackson seconded. The vote was unanimous. Voting were: Chairman David Collins, Ms. Gescheidt, Mr. Jackson, Mr. Cayer and Mr. Taylor.

**ADMINISTRATIVE ISSUES:**

Mr. Taylor made a motion to accept the May 5<sup>th</sup>, 2010 Zoning Board minutes as written. Ms. Gescheidt seconded. The vote was unanimous. Voting were: Chairman David Collins, Mr. Jackson, Mr. Taylor and Ms. Gescheidt.

Mr. Taylor discussed the issue of accepting either a professional engineer or a professional surveyor on a site plan and suggested that the ordinance be modified. There was discussion among the board members regarding this issue. Mr. Brochu made the recommendation that the Board discuss this matter with their regular counsel, Peter Ruggiero. The Chairman stated he will draft a change to the rules of procedure and the Board can look it over.

The Chairman entertained a motion to adjourn. Ms. Gescheidt so moved. The vote was unanimous. Voting were: Chairman David Collins, Mr. Jackson, Mr. Taylor, Ms. Gescheidt, Ms. Taylor Humphrey and Mr. Cayer.

(Whereupon the ZBR meeting ended at 10:00 p.m.)

C E R T I F I C A T E

I, Salvina S. Ferreira, Registered Professional Reporter, hereby certify that the foregoing 07 pages of the Tiverton Zoning Board of Review minutes are transcribed to the best of my knowledge, skill and ability.

I further certify that I am not interested in the event of the action.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed my seal of office this 18th day of June, 2010.

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Salvina S. Ferreira, RPR

My commission expires: September 26, 2013  
ID # 28792

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